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10 Attorneys for Defendant

11 SAM'S WEST, INC. (erroneously named in complaint as "SAM'S WEST, INC.,  
12 SAM'S WEST, INC. dba SAM'S CLUB")

13 **UNITED STATES DISTRICT COURT**

14 **CENTRAL DISTRICT OF CALIFORNIA**

15 EILEEN FARRELL,

16 Plaintiff,

17 vs.

18 SAM'S WEST, INC., and DOES 1 TO  
19 100, Inclusive,

20 Defendants.

Case No: 5:23-cv-01370-AB-SP

Hon. André Birotte Jr.

Crtrm 7B – First Street Courthouse

**STIPULATED PROTECTIVE  
ORDER**

**[NOTE CHANGES MADE BY  
COURT IN §§ 1.2, 6.1, 9.3]**

21 **1. PURPOSE AND LIMITATIONS**

22 The following parties, EILEEN FARRELL ("Plaintiff") and SAM'S WEST,  
23 INC. ("Sam's West"), by their undersigned counsel, have and hereby stipulate and  
24 agree to entry of the following Stipulated Protective Order and to abide by the  
25 following terms:

26 WHEREAS, the Parties have propounded or will propound certain discovery  
27 request and initial disclosures including information which either Party considers to  
28 be proprietary, confidential business records and/or trade secrets, or sensitive  
confidential or private information ("confidential documents and information"); and

1 WHEREAS, the Parties have expressed a willingness to provide the  
2 confidential documents and information which would be necessarily disclosed in  
3 complying with these discovery requests and initial disclosures, provided that the  
4 Court enter an appropriate protective order; and

5 WHEREAS, the Parties acknowledge that this Order does not confer blanket  
6 protections on all disclosures or response to discovery and that the protection it  
7 affords from public disclosure and use extends only to the limited information or  
8 items that are entitled to confidential treatment under the applicable legal principles;  
9 and

10 WHEREAS, the Parties have agreed to this;

11 The following procedure shall govern the production, use and disposal of the  
12 confidential information:

13 1.1 Good Cause Statement. This action is likely to involve trade secrets  
14 and other valuable commercial, financial, technical, security, and/or proprietary  
15 information for which special protection from public disclosure and from use for  
16 any purpose other than prosecution of this action is warranted. Such confidential  
17 and proprietary materials and information consist of, among other things,  
18 confidential business information, information regarding confidential business  
19 practices, or other commercial information (including information implicating  
20 privacy rights of third parties), information generally unavailable to the public, or  
21 which may be privileged or otherwise protected from disclosure under state or  
22 federal statutes, court rules, case decisions, or common law. Accordingly, to  
23 expedite the flow of information, to facilitate the prompt resolution of disputes over  
24 confidential discovery materials, to adequately protect information the parties are  
25 entitled to keep confidential, to ensure that the Parties are permitted reasonable  
26 necessary uses of such material in preparation for and in the conduct of trial, to  
27 address their handling at the end of the litigation, and serve the ends of justice, a  
28 protective order for such information is justified in this matter. It is the intent of the

1 parties that the information will not be designated as confidential for tactical reasons  
 2 and that nothing be so designated without good faith belief that it has been  
 3 maintained in a confidential, non-public manner, and there is good cause why it  
 4 should not be part of the public records of this case.

5 1.2 Acknowledgement of Procedure for Filing Under Seal. The Parties  
 6 further acknowledge, as set forth in Section 9.3 below, that this Stipulated Protective  
 7 Order does not entitle them to file confidential information under seal; Local Civil  
 8 Rule 79-5 sets forth the procedures that must be followed and the standards that will  
 9 be applied when a party seeks permission from the Court to file material under seal.

10 There is a strong presumption that the public has a right of access to judicial  
 11 proceedings and records in civil cases. In connection with non-dispositive motions,  
 12 good cause must be shown to support a filing under seal. *See Kamakana v. City and*  
 13 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*,  
 14 307 F.3d 1206, 1210-11 (9th Cir. 2006), *Makar-Welbon v. Sony Electronics, Inc.*,  
 15 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require  
 16 good cause showing), and a specific showing of good cause or compelling reasons  
 17 with proper evidentiary support and legal justification, must be made with respect to  
 18 Protected Material that a party seeks to file under seal. The Parties' mere  
 19 designation of Disclosure or Discovery Materials as CONFIDENTIAL does not—  
 20 without submission of competent evidence by declaration, establishing that the  
 21 material sought to be filed under seal qualifies as confidential, privileged, or  
 22 otherwise protectable—constitute good cause.

23 Further, if a party is seeking sealing related to a dispositive motion, then  
 24 compelling reasons, not only good cause, for the sealing must be shown and the  
 25 relief sought shall be narrowly tailored to serve the specific interest to be protected.  
 26 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For  
 27 each item or type of information, document, or thing sought to be filed or introduced  
 28 under seal in connection with a dispositive motion, the party seeking protection

1 must articulate compelling reasons, supported by specific facts and legal  
2 justification, for the requested sealing order. Again, competent evidence supporting  
3 the application to file documents under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable in  
5 its entirety will not be filed under seal if the confidential portions can be redacted.  
6 If documents can be redacted, then a redacted version for public viewing, omitting  
7 only the confidential, privileged, or otherwise protectable portions of the document,  
8 shall be filed. Any application that seeks to file documents under seal in their  
9 entirety should include an explanation of why redaction is not feasible.

## 10 **2. SCOPE**

11 The protection conferred by this Stipulation and Order cover not only  
12 confidential material but also (1) any information copied or extracted from the  
13 confidential material; (2) all copies, excerpts, summaries, or compilations of the  
14 confidential material, and (3) any testimony, conversations, or presentations by  
15 Parties or their Counsels that might reveal the confidential material.

16 Any use of the confidential material at trial shall be governed by the orders of  
17 the trial judge. This Order does not govern the use of the confidential material at  
18 trial.

## 19 **3. DURATION**

20 Once a case proceeds to trial, information that was designated as  
21 “confidential” or “produced pursuant to protective order” or in some similar fashion  
22 any document for which it claims protection under this Order, becomes public and  
23 will be presumptively available to all members of the public, including the press,  
24 unless compelling reasons supported in advance of trial. *See Kamakana*, 447 F.3d at  
25 1180-81 (distinguishing “good cause” showing for sealing documents produced in  
26 discovery from “compelling reasons” standard when merits-related documents are  
27 part of court record). Accordingly, the terms of this Protective Order do not extend  
28 beyond the commencement of the trial.

1 **4. DESIGNATING PROTECTED MATERIAL**

2 **4.1 Designation of Confidential Documents and Information.** The  
 3 Responding Party shall mark as “confidential” or “produced pursuant to protective  
 4 order” or in some similar fashion any document for which it claims protection under  
 5 this Order. If only a portion of the material on a page qualifies for protection, the  
 6 Responding Party also must clearly identify the protected portion(s) (e.g., by making  
 7 appropriate markings in the margins). The document, thing and information  
 8 contained in them or gleaned from them shall only be used, shown and disclosed  
 9 only as provided in this Order. The term “confidential documents and information”  
 10 as used in this Order shall be construed to include the document and materials so  
 11 marked, and their content, substance and the information contained in or gleaned  
 12 from them. The term shall also be construed to include any summaries, quotes,  
 13 excerpts and/or paraphrases of the documents, things or information. The  
 14 designation shall be made in good faith and shall not be made with respect to any  
 15 documents which are in the public domain, such as patents, or any other documents  
 16 which has previously been produced or disseminated without confidentiality  
 17 protection.

18 Mass, indiscriminate or routinized designations are prohibited. Designations  
 19 that are shown to be clearly unjustified or that have been made for an improper  
 20 purpose (e.g. to unnecessarily encumber the case development process or to impose  
 21 unnecessary expenses and burdens on other parties) may expose the Designating  
 22 Party to sanctions.

23 If it comes to a Responding Party’s attention that information or items that it  
 24 designated for protection do not qualify for protection, that Responding Party must  
 25 promptly notify all other Parties that it is withdrawing the inapplicable designation.

26 **4.2 Inadvertent Failures to Designate.** If timely corrected, an inadvertent  
 27 failure to designate qualified information or items does not, standing alone, waive  
 28 the Responding Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable  
 2 efforts to assure that the material is treated in accordance with the provisions of this  
 3 Order.

4 **5. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 **5.1 Access to Confidential Documents and Information by Qualified**  
 6 **Persons.** This Protective Order is limited to the context of pre-trial civil discovery.  
 7 This Protective Order does not restrict disseminations of information if gained from  
 8 other public sources outside of pre-trial civil discovery. Accordingly, access to  
 9 confidential documents and other materials, any parts thereof, any summaries or  
 10 extracts thereof, as well as matters contained therein which are produced or obtained  
 11 exclusively through pre-trial discovery shall be limited to the following “qualified  
 12 persons.” The following persons are automatically deemed “qualified person:”

- 13 a. This Court and its employees;
- 14 b. The jurors;
- 15 c. Counsel of record for the parties to this lawsuit;
- 16 d. Those paralegals, stenographic and clerical employees who are  
 17 employed by and assisting counsel of record;
- 18 e. The parties of record and their officers, directors, employees,  
 19 counsel of record and insures to the extent necessary to assist in  
 20 preparing for discovery, depositions, resolution, or for trial, who  
 21 are otherwise assisting in this litigation;
- 22 f. Deposition witnesses;
- 23 g. Witnesses called at trial;
- 24 h. Any mediator who is assigned/chosen to hear this matter, and  
 25 his/her staff, subject to their agreement to maintain  
 26 confidentiality to the same degree as required by this stipulation;  
 27 and  
 28

- i. Any expert or consultant who has been retained or specially employed by a party in anticipation of this litigation or for trial of this case, to the extent necessary to assist in litigation, and who has signed a written certification in the form set as Exhibit “A”; provided, however, that no confidential documents and information shall be disseminated to any expert or consultant:
  - i. Who is an employee of a direct business competitor of the party producing the information; or
  - ii. Who is employed by a direct business competitor of the party producing the information and who directly participates in the design, manufacturing, marketing, or service activities of direct business competitors.

Counsel of record shall maintain such certifications for all designated experts, and shall provide copies of the certifications upon demand to counsel for any opposing party. Demand to one counsel of record for a party is deemed to be a demand to all counsel of record for a party.

5.2 Jurisdiction Over Qualified Persons. Each qualified person is subject to the jurisdiction of this Court for purposes of enforcement of this Order. Counsel of record are responsible for ensuring that their employees and any experts they retain comply strictly with this Order. Violation by an employee of counsel or by an expert retained by counsel shall be deemed a violation of counsel.

5.3 Use of Confidential Documents and Information Generally. Confidential documents, things and information may be used solely in connection with this lawsuit and for no other purpose. No qualified person who gains access to the confidential documents, things and information may disclose them or their contents to any other person without the written stipulation of the producing party or by order of this Court.



1            5.4    Use of Confidential Documents and Information in this Lawsuit.

2 Confidential documents, things and information may be used at trial or at  
3 depositions, in accordance with the following safeguards: if confidential documents,  
4 things and information are used in depositions, all portions of the transcript of such  
5 depositions and exhibits thereto which refer to or relate to such confidential  
6 documents, things or information shall themselves be considered as confidential  
7 documents. The Responding Party will identify the disclosure or discovery material  
8 on the record, before the close of the deposition of all protected testimony. The  
9 party introducing such confidential portions of the transcript and exhibits separately  
10 and labels them “confidential.” In addition, each deponent is ordered that he may  
11 not divulge any confidential documents, things or information except to qualified  
12 persons.

13 **6.    CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14            6.1    Challenges to Claims of Confidentiality. If a party contends that any  
15 document, information or portion of them which another party or third party has  
16 designated as confidential are not entitled to protection, they may file a motion to  
17 change the designation in compliance with Local Rule 37.1 et seq., including the  
18 meet and confer and joint stipulation requirements. The burden is placed on the  
19 proponent of confidentiality to demonstrate good cause. The document and  
20 information shall remain confidential until their status is changed by stipulation or  
21 order.

22 **7.    A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
23 **PRODUCED IN THIS LITIGATION**

24            (a) The terms of this Order are applicable to information produced by a Non-  
25 Party in this Action as designated as “confidential” or “produced pursuant to  
26 protective order” or in some similar fashion any document for which it claims  
27 protection under this Order. Such information produced by Non-Parties in  
28 connection with this litigation is protected by the remedies and relief provided by



1 this Order. Nothing in these provisions should be construed as prohibiting a Non-  
2 Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to  
4 produce a Non-Party's confidential information in its possession, and the Party is  
5 subject to an agreement with the Non-Party not to produce the Non-Party's  
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Required Party and the Non-Party  
8 that some or all of the information requested is subject to a confidentiality  
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party a copy of the Stipulated Protective  
11 Order in this Action, the relevant discovery request(s), and a reasonably specific  
12 description of the information requested; and

13 (3) make the information requested available for inspection by the  
14 Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this Court with 14  
16 days of receiving the notice and accompanying information, the Receiving Party  
17 may produce the Non-Party's confidential information responsive to the discovery  
18 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
19 not produce any information in its possession or control that is subject to the  
20 confidentiality agreement with the Non-Party before a determination by the Court.  
21 Absent a court order to the contrary, the Non-Party shall bear the burden and  
22 expense of seeking protection in this Court of its Protected Material.

23 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
24 **PROTECTED MATERIAL**

25 When a Responding Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or otherwise  
27 protection, the obligations of the Receiving Parties are those set forth in Federal  
28 Rule of Civil Procedure 16(b)(5)(B). This provision is not intended to modify

1 whatever procedure may be established in an e-discovery order that provides for  
2 production without prior privilege review. Pursuant to Federal Rule of Evidence  
3 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure  
4 of a communication or information covered by the attorney-client privilege or work  
5 product protection, the Parties may incorporate their agreement in the Stipulated  
6 Protective Order submitted to the Court.

7 **9. MISCELLANEOUS**

8 9.1 Right to Further Relief. Nothing in this Order abridges the rights of  
9 any person to seek its modification by the Court in the future.

10 9.2 Right to Assert Other Objections. By stipulating to the entry of this  
11 Protective Order, no Party waives any right it otherwise would have to object to  
12 disclosing or producing any information or item on any ground not addressed in this  
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
14 ground to use in evidence of any of the material covered by this Protective Order.

15 9.3 Filing and Sealing. A Party that seeks to file under seal any Protected  
16 Material must comply with Local Rule 79-5. Protected Material may only be filed  
17 under seal pursuant to a court order authorizing the sealing of the specific Protected  
18 Material at issue. If a Party's request to file Protected Material under seal is denied  
19 by the court, then the Party may file the information in the public record unless  
20 otherwise instructed by the court.

21 9.4 Amendments. Nothing in this Order will prejudice either party from  
22 seeking amendments broadening or restricting the rights of access to and the use of  
23 confidential documents or information, or contesting the designation of a  
24 confidential document or qualified person.

25 **10. FINAL DISPOSITION**

26 10.1 Disposal at the Conclusion of this Action. After the final disposition of  
27 this Action, within sixty (60) days of a written request by the Responding Party,  
28 each Receiving Party must return all confidential documents, things and

1 information, and all copies thereof. Whether the documents, things and information  
2 is returned or destroyed, the Receiving Party must submit a written certification to  
3 the Producing Party (and, if not the same person or entity, to the Responding Party)  
4 by the 60 day deadline that (1) identifies (by category, where appropriate) all the  
5 confidential material that was returned or destroyed and (2) affirms that the  
6 Receiving Party has not retained any copies, abstracts, compilation, summaries or  
7 any other format reproducing or capturing any of the confidential material.

8 Notwithstanding this provision, Counsel are entitled to retain any archival copy of  
9 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
10 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
11 work product, and consultant and expert work product, even if such material contain  
12 confidential material. Any such archival copies that contain or constitute  
13 confidential material remain subject to this Protective Order as set forth in Section 3  
14 (DURATION).

15 //

16 //



**EXHBIT "A"**  
**EILEEN FARRELL v. SAM'S WEST, INC.**  
**UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF**  
**CALIFORNIA CASE NO. 5:23-cv-01370-AB-SP**

I, \_\_\_\_\_, [print or type name] am employed by \_\_\_\_\_

I am:

- \_\_\_\_\_ a. A party to this action.
- \_\_\_\_\_ b. Counsel for \_\_\_\_\_.
- \_\_\_\_\_ c. Employed by \_\_\_\_\_.
- \_\_\_\_\_ d. I have been retained by counsel for \_\_\_\_\_.

My present occupation or job description is: \_\_\_\_\_

I hereby acknowledge that I have received and read a copy of the Protective Order entered in this action in the United States District Court Central District of California, Case No. 5:23-cv-01370-AB-SP, and I understand the limitations this Protective Order imposes upon the use, disclosure, and the eventual return and/or destruction of information designated as "confidential litigation materials." I further understand that any unauthorized use and disclosure of any confidential litigation materials shall constitute contempt of Court, and I hereby consent to the personal jurisdiction of the United States Central District of California in connection with any use or disclosure of confidential litigation materials. I agree to be bound by all terms of such Protective Order.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_